

**Letter of Findings: 01-20190958
Individual Income Tax
For the Years 2014-2015**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Assessment of individual income tax was premature. Therefore, the proposed assessments are withdrawn.

ISSUES

I. Income Tax–Assessment.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-8.1-5-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-1](#).

Taxpayer protests the imposition of Indiana individual income tax.

II. Tax Administration–Penalty and Interest.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual indicted in the Southern District of Indiana for illegal activities that occurred in Indiana during 2015 and 2016. As the result of a public information review, the Indiana Department of Revenue ("Department") determined that Taxpayer had received unreported income in the 2014 and 2015 tax years and so owed Indiana income tax on that income. The Department therefore issued proposed assessments for individual income tax, penalty, and interest for those years. Taxpayer protested the proposed assessments and this Letter results. Further facts will be supplied as required.

I. Income Tax–Assessment.

DISCUSSION

Taxpayer protests the assessment of Indiana income tax for the years 2014 and 2015. The Department based its determination that additional income tax was due on the data it reviewed from publicly available information. Taxpayer does not deny that the publicly available information is correct, but instead claims it is incomplete and does not support the finding of unreported income in Indiana during the tax years.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this

decision, as well as the preceding audit, shall be entitled to deference.

First, the Department refers to IC § 6-3-2-1(a), which states:

Each taxable year, a tax at the following rate of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person:

- (1) For taxable years beginning before January 1, 2015, three and four-tenths percent (3.4[percent]).
- (2) For taxable years beginning after December 31, 2014, and before January 1, 2017, three and three-tenths percent (3.3[percent]).
- (3) For taxable years beginning after December 31, 2016, three and twenty-three hundredths percent (3.23[percent]).

Next, IC § 6-3-1-3.5 defines adjusted gross income by referencing the Internal Revenue Code:

When used in this article, the term "adjusted gross income" shall mean the following:

(a) In the case of all individuals, "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code), modified as follows:

....

[45 IAC 3.1-1-1](#) further describes adjusted gross income:

Adjusted Gross Income for Individuals Defined. For individuals, "Adjusted Gross Income" is "Adjusted Gross Income" as defined in Internal Revenue Code § 62 modified as follows:

- (1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
- (2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
- (3) Make all modifications required by [IC 6-3-1-3.5\(a\)](#).

Taxpayer in this case was indicted on two counts: conspiracy to distribute controlled substances and distribution of a controlled substance. He eventually pled guilty to both counts, but neither the indictment nor the plea deal provide details about how much income was earned from the criminal activity. The Department also noted that Taxpayer had an Indiana commercial driver's license during the tax years and had registered multiple vehicles with the BMV. Neither of these public records show that Taxpayer earned money in Indiana during the tax years; only that he had money to register vehicles and was capable of earning money with a commercial driver's license.

After review of the documents and analysis supplied in the protest process, the Department agrees with Taxpayer's protest. While the publicly available information upon which the Department relied in reaching its determination that income tax was due for 2014 and 2015 was correct, it was also incomplete. Taxpayer has shown that this information did not support the claim that he earned income in Indiana during the tax years. Therefore, Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c) and has proven the proposed assessments wrong.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration—Penalty and Interest.

DISCUSSION

Taxpayer requested that the Department abate the negligence penalty and interest. Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) *incurs, upon examination by the department, a deficiency that is due to negligence;*
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

(*Emphasis added*).

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty when a taxpayer establishes that its failure to pay a tax was due to reasonable cause and not due to negligence, as provided by [45 IAC 15-11-2](#)(c). The taxpayer must demonstrate that it exercised ordinary business care in carrying out or failing to carry out a duty giving rise to the penalty. Reasonable cause is fact sensitive and will vary based on the facts of each individual case.

In this instance, the Taxpayer did not pay taxes for the years at issue because he did not believe he earned any money in Indiana. The documentation relied upon by the Department demonstrated some activity in Indiana but provided no basis for the claimed Indiana income figures. Taxpayer has exercised reasonable care as described in [45 IAC 15-11-2](#)(c) by not paying taxes where income was not earned. Regarding interest, under IC § 6-8.1-10-1(e), the Department is not permitted to waive interest. However, in this case there is no base income tax upon which to impose interest. Therefore, the imposition of interest is moot.

FINDING

Taxpayer's protest of the negligence penalty and interest is sustained.

SUMMARY

Taxpayer is sustained on Issue I regarding the imposition of income tax. Taxpayer is sustained on Issue II regarding the imposition of penalty and is also sustained regarding the imposition of interest since the imposition of interest is moot.

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